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8 US District Court  
9 Central District of  
10 California

11 **Taitz** ) **Hon. Cormac Carney presiding**

12 **V** ) **15-cv-00508**

13 **Burwell** )

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15 **OPPOSITION TO SECOND MOTION TO DISMISS**  
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## STATEMENT OF FACTS

An issue of quarantine and isolation of individuals with infectious diseases arose in a related case Taitz v Johnson et al 14-cv-0119. Due to refusal by the defense to produce any requested records, Taitz filed a FOIA request for production of documents. Per 5 USC 552 FOIA, documents were supposed to be provided within 20 days. As no response was received for 46 days, a legal action at hand was filed.

Over a month after this legal action was filed, defendant provided only a few documents. Most of the requested documents were not provided.

On 02.14.15 the defense filed their motion to dismiss under FRCP 12b (6). The motion was fully briefed. The case was transferred from Texas to California for adjudication. This court decided not to rule on the Motion to Dismiss which was fully briefed and allowed the defendants to file a second, make up motion to dismiss. Defense provides herein her opposition to the second Motion to Dismiss.

## ARGUMENT

### THE COURT SHOULD DISREGARD ALL NEW FACTS AND LEGAL

### ARGUMENTS ADDED BY THE DEFENDANT IN THE SECOND

### MOTION TO DISMISS

On 02.04.15 Defense filed a motion to Dismiss under 12b(6) and 56(a) (ECF 4). Plaintiff filed an opposition and Defense filed a reply. The case was transferred to this court for adjudication. The court ordered the defense to re-file its' motion to dismiss with a new notice. Instead, the defense filed a whole new motion with new legal arguments and new facts. There is no FRCP rule allowing a second, make -up

1 Motion to Dismiss. This would not be allowed for private parties and should not be  
2 allowed for the government. The government should not be allowed a second bite  
3 of an apple and should not be allowed to clean up a poorly written motion and to  
4 supplement new facts and theories in the second motion. For this reason the court  
5 should disregard all new legal theories and new facts added in the second motion  
6 to dismiss. Among those are two theories.

7 First, that the case is filed against the Secretary of HHS in her official capacity as  
8 the Secretary of HHS and not against HHS. This is a new theory added in the  
9 second, make-up, clean-up motion to dismiss and should be disregarded as it was  
10 not in the first motion to dismiss. Additionally, the cases are routinely filed against  
11 the government officials in their capacity as the chairs of agencies and departments  
12 and the courts consider those complains as complaints against an agency. Defense  
13 did not provide any precedents showing any judge ever dismissing a FOIA case  
14 because the head of agency in her official capacity and not the agency is named as  
15 a defendant.

16  
17 Second addition to the second motion to dismiss is a notion that a reasonable  
18 search was done, however just as it was stated in the original opposition, this is  
19 only a presumption and it is rebutted by the facts

20 **THE CASE AT HAND CANNOT BE DISMISSED UNDER FRCP 12B6**

21 12b6 motion means failure to state the claim for relief. This motion at hand does  
22 not apply as the plaintiff properly stated the claim for relief in her complaint.

23 The case cannot be more simple and clear. The Freedom of Information (FOIA) 5  
24 USC 552 is unambiguous. The government is supposed to answer a FOIA request  
25 within 20 days. The defendant concedes that the government received the FOIA  
26 request and did not respond for 46 days prior to filing of this case.

1 As such, the plaintiff properly stated her claim for relief and the case cannot be  
2 dismissed under FRCP 12b6.

3 **THE CASE CANNOT BE DISMISSED UNDER FRCP 56 (A)**

4 FRCP 56(a) Motion for Summary Judgment is granted if "the movant shows that  
5 there is no genuine dispute as to any material fact and the movant is entitled to  
6 judgment as a matter of law"

7 1. At the time of filing of the case at hand the government did not provide any  
8 information. So, as a matter of law actually the plaintiff is the one who is entitled  
9 to a judgment in her favor, since there is no dispute that as a matter of law the  
10 government flagrantly violated 5 USC552 by not responding to a FOIA request.

11 2. The government's argument boils down to the fact that over a month after the  
12 case was filed and facing the need to file an answer to the complaint, the  
13 government finally responded. However, the response was provided after the case  
14 was filed and in the best case scenario, if the court finds that all the documents  
15 were provided in the belated response, the government should still reimburse the  
16 plaintiff for the costs incurred in having to file this law suit.

17 3. The government claims that all the documents were provided. The plaintiff  
18 states that not all of the documents were provided. This is a genuine question of  
19 fact, which means that FRCP 56 (a) motion should be denied as there is a  
20 genuine issue of fact.

21 4. The government states that all of the reasonable searches were done, all the  
22 documents were provided and claims that there is a presumption that the assertion  
23 by the government is correct. However, every presumption is rebuttable. Not long  
24 ago the government claimed that all of the available e-mails of Secretary of State  
25 Hillary Clinton were produced. Nevertheless, Federal Judge, Emmet Sullivan,  
26 ordered production and now we, members of the public, are receiving Secretary of  
27  
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State Clinton's e-mails which previously were considered to be non-existent. Similarly, the government claimed that the all of the e-mails of Lois Lerner, former Director of Internal Revenue Service's Exempt Organizations Unit, were released. However, FOIA action *Judicial Watch, Inc. v. Internal Revenue Service* (No. 1:13-cv-01559) revealed that Ms. Lerner had a second e-mail account under the name Tobi Miles (the name of her dog) and as a result of the FOIA law suit multiple e-mails were released, which showed targeting of conservative organizations. As a result of this case Ms. Lerner resigned and recently Congressman Jason Chaffetz, the Chair of the powerful House Oversight committee, proposed to commence the impeachment of the Commissioner of IRS, John Koskinnen. So, these recent events show that the court cannot blindly assume that all the information was provided when the government claims so.

**APRIL 2, 2015 LETTER FROM SENATORS MCCAIN AND FLAKE AND CONGRESSMEN GOSAR AND KIRKPATRICK SHOW THAT NOT ALL DOCUMENTS WERE PROVIDED BY THE GOVERNMENT.**

The plaintiff attaches herein a letter from Senators McCain and Flake and Congressmen Gosar and Kirkpatrick to the Director of DHS, Jeh Johnson. (Exhibit 1) This letter relates to the contemplated release from the DHS custody of an illegal alien with Drug Resistant Tuberculosis, which is a deadly disease of public significance, which requires quarantine. The letter was dated April 2, 2015, it states that this illegal alien was in the DHS custody, in Arizona, for seven months. This means that this illegal alien was in custody from September 2, 2014. The FOIA case at hand was filed in November 2014 and required records of quarantine order going back to 2012. The government provided only one record of only one individual quarantined in Texas. There was no record of an individual quarantined

1 in Arizona, so this is a clear proof that not all records were provided. The  
2 government claims that all reasonable searches were done. This assertion does not  
3 hold water. Res Ipsa Loquitur, the facts speak for themselves. If a reasonable  
4 search was done, the government would have found and provided to the plaintiff a  
5 record of quarantine of at least this one illegal alien with deadly drug resistant  
6 Tuberculosis from the DHS detention center in Arizona and they did not. They  
7 provided only one record of one individual from Texas, meaning that there was no  
8 sufficient reasonable search done.

9  
10 The most important part of this FOIA request entailed request for isolation  
11 and quarantine records. Within the response defendant provided only one  
12 quarantine record, most of the pages of the response contained a lengthy  
13 article about Ebola in Africa and blank forms. Based on plaintiffs  
14 knowledge and informed belief, there are hundreds of cases of isolation  
15 and quarantine of individuals with infectious diseases. Based on the informed  
16 belief of the plaintiff, allegation by the defendant that submission of only 1  
17 record for only one patient represents all the requested documents, is false.

18 Specifically, question 3 in FOIA request seeks "Any and All  
19 Tuberculosis Quarantine orders issued from 2012".  
20

21 Question 4 sought : "Any and all quarantine/isolation orders from 2012.

22 "Question 4 related to all quarantine/isolation orders. The answer  
23 from the defense purports to claim that there was only 1 such  
24 order and only one patient who required isolation/quarantine.

25 However, the prior judge in this case, Hon. Andrew Hanen  
26 stated during October 29, 2014 hearing:  
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1 "THE COURT: Let me – we have had people with active TB in this  
2 courtroom, which I assume since they were arrested and gone through  
3 various -- you know, according to what you're telling me, medical  
4 screenings and been in jail for a while before they ever get to us, I mean,  
5 we've had active TB people, immigrants in this courtroom. In this  
6 courtroom. You know, I mean, exposed Cristi and our interpreter and  
7 Barbara exposed to it. "p89, Transcript of October 29, 2014 hearing in Taitz  
8 v Johnson, Obama, Burwell 14-cv-119 USDC Southern District of TX.  
9 (Emphasis added)

10  
11 Based on the statement of Judge Hanen, there were several patients with active  
12 TB in his own courtroom, illegal aliens in Federal custody, there should have  
13 been isolation orders for them.

14  
15 Further, Exhibit 2 is July 30, 2014 report by John Roth, Inspector General of  
16 the Department of Homeland Security. The report states on page 3"  
17 Additional Observations. Many UAC and family units require treatment for  
18 communicable diseases, including respiratory illnesses, tuberculosis,  
19 chicken pox, and scabies."(UAC stands for unaccompanied children). The  
20 report did not state 1 person; it clearly stated MANY UAC and family units.  
21 As such there should be multiple records, not one record.

22  
23 Furthermore, Taitz is in contact with border patrol agents in San Diego,  
24 CA.

1 Taitz returned a call from the President of the local border Patrol Officers  
 2 Union, Mr. Chris Harris. Taitz provides a declaration -summary of the  
 3 interview of Mr. Harris attached herein.

4 During 02.10.2015 interview Mr. Harris  
 5 stated:  
 6

- 7 1. Since 2012 there were around a dozen cases of illegal aliens with Tuberculosis  
 8 crossing the border in San Diego area and being sent to local hospitals for quarantine and  
 9 isolation.
- 10 2. Border Patrol agents are assigned hospital duty to watch over these illegal aliens  
 11 in the hospitals. Mr. Harris was on such duty repeatedly.
- 12 3. Border Patrol Agents take to the hospital only illegal aliens who tell them that they  
 13 have TB or when they suspect TB due to their persistent cough.
- 14 4. CDC claim that there was only one case of quarantine and isolation for TB in the whole  
 15 nation in the period between 2012-2014, is disingenuous at best.
- 16 5. Aside from Tuberculosis, Mr. Harris observed illegal aliens with other infectious  
 17 diseases crossing the border. He saw dozens of cases of illegal aliens with AIDS crossing  
 18 the border. He saw multiple individuals with a combination of multiple infectious  
 19 diseases, such as Tuberculosis and AIDS and others, crossing the border.

20 Further, Taitz received an e-mail from Border Patrol Officer Gabe Pacheco, spokesperson of the  
 21 local Border Patrol Union. (Exhibit 3)

22 Mr. Pacheco stated that he did not receive authorization to provide Taitz with a total number  
 23 of individuals, who were taken to the hospital for isolation and quarantine. However, Mr.  
 24 Pacheco provided Taitz with December 2009 report by Inspector General of the Department  
 25 of Homeland Security. The report is voluminous, however pertinent page 2 states "ICE detains  
 26 more than 32,000 aliens on an average day". Simple math shows that if there are 32,000  
 27 detained aliens per day, multiplied by 365, it means there are 11,680,000 per year. Taitz sought  
 28 information on isolation since 2012, since DACA program started. This means that in 3 years there  
 were over 34 million illegal aliens in ICE custody and according to the report by the Inspector  
 General of DHS, many of them have infectious diseases, such as Tuberculosis, chicken pox and  
 others. It defies logic to believe that there was only 1 case of isolation and quarantine.



1 Hospitals and detention centers are required to report cases of infectious diseases and outbreaks to  
2 the CDC. Such information is supposed to be kept in a log and a bound file. Due to the fact that  
3 defendant did not provide Vaughn index and did not provide most of the documents requested,  
4 Plaintiff is asking the court to order defendant to provide to the plaintiff for review  
5 and copying a log of isolation/quarantine records. Plaintiff will redact all  
6 sensitive personal information.

7 Further, the matter of quarantine records is even more important today than ever.

8 Recently, the Obama administration announced that it will move into the US  
9 some 200,000 migrants out of nearly a million migrants from the Middle East,  
10 Africa and Asia, who are currently flooding Europe. Among these migrants  
11 there are individuals with MERS (Middle Eastern Respiratory Syndrome),  
12 Tuberculosis, AIDS, Malaria, Cholera and other infectious diseases of public  
13 significance and proper quarantine records from the CDC/HHS are extremely  
14 important in order to prevent major epidemics. As an example, "Six European  
15 mayors have signed the agreement amid a surge of migrants arriving in their  
16 towns. The Italians fear that migrants could spread dangerous illnesses after  
17 scabies and tuberculosis outbreaks were recorded among some of the 68,000  
18 who have arrived in the country since January. One of the concerned officials  
19 said: "We are a small town with 300 inhabitants, if someone with a strange  
20 disease arrives will we have to quarantine the town?"

21 <http://www.express.co.uk/news/world/589606/immigration>  
22 [-Europe-EU-European-Union-migrants-infectious-disease-](#)  
23 [health-tuberculosis-Italy](#). These migrants will be  
24 placed in 100 cities among them cities right here in  
25 Orange county, CA.

26 Additionally on July 25, 2015 Federal Judge Dolly Gee in the Central District of  
27 CA in Flores v Johnson 2:85-cv-04544 DMG-AGR issued injunctive relief  
28

1 releasing illegal alien accompanied minors and illegal alien adults from all DHS  
2 and HHS detention centers, which are mostly in Texas. These individuals are  
3 moving to California and other states, many have infectious diseases. Her decision  
4 prevents detention in DHS facilities of illegal alien minors and their families and it  
5 led to a new flood of illegal aliens. "WASHINGTON (AP) — The U.S. Border  
6 Patrol arrested nearly 10,000 unaccompanied immigrant children and  
7 families caught illegally crossing the border with Mexico in August, a 52  
8 percent jump from August 2014, according to statistics published by the  
9 agency Monday afternoon.

10 Since the start of the fiscal year in October, border agents have arrested  
11 more than 35,000 children traveling alone and more than 34,500 people  
12 traveling as families, mostly mothers and  
13 children. [http://www.chron.com/news/texas/article/White-House-Surprising-](http://www.chron.com/news/texas/article/White-House-Surprising-uptick-in-US-border-6519396.php)  
14 [uptick-in-US-border-6519396.php](http://www.chron.com/news/texas/article/White-House-Surprising-uptick-in-US-border-6519396.php)  
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16 So, all of this data highlights the importance of proper quarantine records and  
17 transparency of these records. Additionally, it shows that the government's  
18 assertion that there was only one quarantine record for only one patient in the  
19 whole country is simply unreasonable and improbable.  
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## 21 22 23 CONCLUSION

24 1. Defendant's Second Motion to Dismiss should be denied. Court  
25 should order defendant to produce all documents requested in FOIA, as  
26 well as production of Vaughn index.  
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1           2. Court should order defendant to pay for the court fees of the  
2 plaintiff.

3           3. The court should allow the plaintiff to review and copy the log of  
4 quarantines at the CDC headquarters at Atlanta, GA. The plaintiff will  
5 redact all personal information of the individuals in her copy.  
6

7 Respectfully  
8 submitted,  
9

10 /s/ Orly Taitz,

11 *11.05.15*

12           29839 Santa

13 Margarita, ste 100,

14 RSM, CA 92688  
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20 Declaration of Orly  
21 Taitz

22 I, Orly Taitz have personal knowledge of the facts below and declare as  
23 follows:

24 On 02.10.2015 I interviewed by phone Border Patrol Officer, President of  
25 local  
26 San Diego Border Patrol Union, Mr. Chris Harris. I reached Mr. Harris at 858-  
27 922-  
28 3197 number which was provided to me earlier by Mr. Harris. During  
02.10.2015 interview Mr. Harris stated:

1 1. Since 2012 there were around a dozen cases of illegal aliens  
2 with Tuberculosis crossing the border in San Diego area and being sent  
3 to local hospitals for quarantine and isolation.

4 2. Border Patrol agents are assigned hospital duty to watch over these  
5 illegal aliens in the hospitals. Mr. Harris was on such duty repeatedly.

6 3. Border Patrol Agents take to the hospital only illegal aliens who tell  
7 them that they have TB or when they suspect TB due to their persistent  
8 cough.

9 4. CDC's claim that there was only one case of quarantine and isolation for  
10 TB

11 in the whole nation in the period between 2012-2014, is disingenuous  
12 at best.

13 5. Aside from Tuberculosis, Mr. Harris observed illegal aliens with  
14 other infectious diseases crossing the border. He saw dozens of cases  
15 of illegal aliens with AIDS crossing the border. He saw multiple  
16 individuals with a combination of multiple infectious diseases, such as  
17 Tuberculosis and AIDS and others, crossing the border.

18 I declare that all of the above is true and correct to the best of my knowledge  
19 and informed belief.

20 /s/ Orly Taitz



21 02.17.2015

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